Exhibit 2

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION

This Document Relates to:

Electrograph Systems, Inc. et al. v. Technicolor SA, et al., No. 13-cv-05724;

Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust v. Technicolor SA, et al., No. 13-cv-05261;

Best Buy Co., Inc., et al. v. Technicolor SA, et al., No. 13-cv-05264;

Interbond Corporation of America v. Technicolor SA, et al., No. 13-cv-05727;

Office Depot, Inc. v. Technicolor SA, et al., No. 13-cv-05726;

Costco Wholesale Corporation v. Technicolor

No. 07-cv-5944-SC
MDL No. 1917

THOMSON DEFENDANTS' OPPOSITION TO DIRECT ACTION PLAINTIFFS' MOTION TO COMPEL 30(b)(6) TESTIMONY OF THOMSON SA AND THOMSON CONSUMER ELECTRONICS, INC.

SA, et al., No. 13-cv-05723;

P.C. Richard & Son Long Island Corporation, et al. v. Technicolor SA, et al., No. 31:cv-05725;

Schultze Agency Services, LLC, o/b/o Tweeter Opco, LLC, et al. v. Technicolor SA, Ltd., et al., No. 13-cv-05668;

Sears, Roebuck and Co. and Kmart Corp. v. Technicolor SA, No. 3:13-cv-05262;

Target Corp. v. Technicolor SA, et al., No. 13-cv-05686

Tech Data Corp., et al. v. Hitachi, Ltd., et al., No. 13-cv-00157

Sharp Electronics Corp., et al. v. Hitachi, Ltd., et. al., No. 13-cv-01173

ViewSonic Corporation v. Chunghwa Corp., et al., No. 14-cv-02510

I. INTRODUCTION

The Supreme Court has long recognized that memoranda prepared by outside counsel reflecting counsel's interviews of a corporation's current or former employees for purposes of providing the corporation legal advice about pending or threatened litigation are protected by the attorney-client privilege and work product doctrine and are not discoverable. *Upjohn v. United States*, 449 U.S. 383, 395-400 (1981). Indeed, the forced disclosure of the contents of such materials "is particularly disfavored because it tends to reveal the attorney's mental processes." *Id*. at 399. Accordingly, such materials are afforded "special protection." *Id*. at 400.

Moreover, while facts communicated during privileged employee interviews are not shielded from discovery merely because they were communicated to an attorney, it does not follow that a corporation must prepare a Rule 30(b)(6) designee to reveal the contents of privileged attorney interview memoranda. Instead, as numerous courts have recognized, a party may discover these facts by directly deposing the individual witness who was interviewed by the corporation's counsel. *See id*. at 396 (emphasizing that results of internal investigation could not be discovered from corporation but that the opposing party "was free to question the employees who communicated with [inside] and outside counsel."); *Hickman v. Taylor*, 329 U.S. 495, 509 (1947) (holding that attorney's witness interview notes could not be discovered, but that "the essence of what petitioner seeks … is readily available to him direct from the witnesses for the asking."); *Admiral Ins. Co. v. U.S. Dist. Court for Dist. of Arizona*, 881 F.2d 1486, 1492 (9th Cir. 1989) (finding memoranda reflecting corporation's interviews of former employees may not be discovered, but that information communicated by the witnesses could be discovered "by deposing the employees.")

Direct Action Plaintiffs ("DAPs") seek to discover the results of privileged, work product protected interviews conducted by outside counsel for Thomson SA and Thomson Consumer Electronics, Inc. ("Thomson Consumer") (collectively the "Thomson Defendants") by compelling them to prepare their Rule 30(b)(6) designee to review the protected materials and testify about their factual content. As discussed below, and as supported by case law, compelling such testimony would be tantamount to compelling production of the privileged witness memoranda.

DAPs' attempts to discover this privileged and protected information is improper and not supported by applicable case law, which, as noted above, recognizes that the proper manner to discover information in the possession of the Thomson Defendants' former employees is to depose these individuals directly. Indeed, if the DAPs could force the Thomson Defendants to prepare a Rule 30(b)(6) representative to testify regarding the contents of privileged memoranda prepared during the course of an internal investigation, the attorney-client privilege and work product protections traditionally afforded to such materials would be eviscerated. The Court should not countenance such a result especially when, as here, alternative means exist to discover this information through depositions of individual witnesses. Therefore, DAPs' motion to compel should be denied.

II. FACTUAL BACKGROUND

Upon receiving a subpoena from the United States Department of Justice ("DOJ") and notice from the European Commission ("EC") regarding those agencies' investigations into potentially anticompetitive conduct in the cathode ray tube ("CRT") industry, in late 2007, the Thomson Defendants engaged the outside law firm Sullivan and Cromwell LLP ("Sullivan") to conduct an internal investigation into the Thomson Defendants' participation, if any, in the alleged conduct. (Declaration of Jeffrey S. Roberts in Support of Thomson Defendants' Opposition to Direct Action Plaintiffs' Motion to Compel 30(b)(6) Testimony ("Roberts Decl.") at ¶ 2, attached as **Ex. 1**.) So that it could provide legal advice to the Thomson Defendants and assist them in responding to the EC and/or DOJ, Sullivan conducted a series of interviews with then current or former employees of the Thomson Defendants.[1] (*Id*. at ¶ 3.) The Sullivan attorneys selected the subjects addressed and questions posed during the interviews and then, after the interviews were completed, prepared memoranda which summarized the results of the interviews based on the attorneys' understanding and judgments of which comments made by the

[1] The identity of the individuals counsel selected to interview is protected work product. *In re MTI Tech. Corp. Sec. Litig. II*, 2002 WL 32344347, at *3 (C.D. Cal. June 13, 2002); *Mitchell Engineering v City and County of San Francisco*, 2010 WL 1853493, at *1 (N.D. Cal. May 6, 2010).

attorneys and interviewees were important and potentially legally significant ("Sullivan Memos"). (*Id*. at ¶ 4.) The memoranda are not verbatim records of the interviews, do not contain any clearly delineated "fact" sections, and reflect the mental impressions, opinions, and conclusions of the attorneys regarding the interviews, including the legal import of the information the interviewees provided. (*Id*. at ¶ 5.)

In May 2014, as part of its defense of the instant actions, the Thomson Defendants' current outside law firm, Faegre Baker Daniels LLP ("Faegre") conducted a limited number of interviews of certain former employees of Thomson SA. (*Id*. at ¶ 6.) Thomson Consumer's General Counsel, Ms. Meggan Ehret, was also present during some of these interviews. (*Id*. at ¶ 7.) Faegre attorneys selected the subjects addressed and questions posed during the interviews and then, after the interviews were completed, prepared memoranda which summarized the results of the interviews based on the attorneys' understanding and judgments of which comments made by the attorneys and interviewees were important and potentially legally significant ("Faegre Memos"). (*Id*. at ¶ 8.) Like the Sullivan Memos, the Faegre Memos are not verbatim records of the interviews, do not contain any clearly delineated "fact" sections, and reflect the mental impressions, opinions, and conclusions of the attorneys regarding the interviews, including the legal import of the information the interviewees provided. (*Id*. at ¶ 9.)

Since discovery against the Thomson Defendants in these actions began, the Thomson Defendants have produced to the Plaintiffs over 283,000 bates labeled pages of documents. Because many of these documents were produced in native format with a single bates number and many of these native files are twenty pages or longer, the Thomson Defendants have likely produced over 1 million pages of documents. (*Id*. at ¶ 10.) To date, DAPs have deposed five former employees of Thomson Consumer – Mr. Jack Brunk, a former CPT salesman, Mr. Tom Carson, a former manager of Thomson Consumer's CPT sales and operations, Mr. J.P. Hanrahan, a former manager of Thomson Consumer's NAFTA CPT sales, Mr. Alex Hepburn, a former NAFTA CPT market intelligence analyst, and Mr. Jack Hirschler, a former CPT salesman. DAPs also deposed the only current Thomson Consumer employee who played a meaningful role in its former CPT business, Ms. Jackie Taylor-Boggs, an executive formerly responsible for procuring

raw materials used to manufacture CPTs and related components. (*Id*. at ¶ 11.) The Court has also granted DAPs' motions for issuance of letters of request seeking judicial assistance, which have been served on the French court, so that in accord with Hague Convention procedures, DAPs may take the depositions of four former Thomson SA employees in France – Mr. Emeric Charamel, a former CPT salesman, Mr. Christian Lissourges, a former manager of CPT sales, Ms. Agnes Martin, a former market intelligence analyst, and Mr. Didier Trutt, a former manager of CPT operations. On January 22, 2015, counsel for DAPs informed the Thomson Defendants "that the clerk at the Paris court responsible for overseeing the letters of request has received the letters of request and has reserved a courtroom on March 6, 9, and 10 for our requested depositions. We understand that a judge will be assigned to the matter within one or two weeks, and that the judge will issue witness notices shortly thereafter." (Jan. 22, 2015 Email from C. Benson, attached as **Ex. 2**.) Accordingly, DAPs will soon depose former Thomson SA employees from whom they may directly discover potentially relevant facts. In addition to this discovery, DAPs have received millions of pages of documents and deposed over one hundred individuals from the Thomson Defendants' alleged co-conspirators.

On January 8-9, 2015, the DAPs and DPPs took the Fed. R. Civ. P. 30(b)(6) depositions of the Thomson Defendants. Ms. Ehret, the Thomson Defendants' Rule 30(b)(6) designee,[2] spent over 100 hours preparing for the deposition by reviewing documents, attending depositions, and communicating with current and former employees. (*See* Thomson Defendants' Rule 30(b)(6) Depo. at 384:14-25; 526:1-18; 589:16-590:10, attached as **Ex. 3**.) However, because they are protected by the attorney client privilege and the work product doctrine, Ms. Ehret did not review in preparation for the deposition and has never read at any other time, the Sullivan and Faegre Memos. (*Id.*at 538:19-540:12.)

[2] Because the Thomson Defendants exited the CPT industry in 2005, no individuals with significant knowledge regarding the Thomson Defendants' former CPT business are still employed by the companies. Accordingly, the Thomson Defendants designated Ms. Ehret, who attended several of the depositions that DAPs have conducted of former Thomson Consumer employees, as their Rule 30(b)(6) designee.

During the Rule 30(b)(6) deposition the Thomson Defendants' counsel instructed Ms. Ehret not to testify about information she learned while attending the Faegre interviews, if the Faegre interview was Ms. Ehret's only source of information about the topic. (*See e.g.*, **Ex. 3** at 661:14-663:14.) However, to the extent Ms. Ehret possessed information about the topic from any other non-privileged source, she was permitted to testify. (*Id.*) As such, during the Rule 30(b)(6) deposition Ms. Ehret did not testify about: (1) the contents of the Sullivan and Faegre Memos and (2) her recollection of information she learned exclusively through her attendance at some of the Faegre interviews.

III. ARGUMENT

A. The Sullivan and Faegre Memos are Protected by the Attorney-Client Privilege and May Not Be Discovered.

The attorney-client privilege precludes discovery of confidential communications between attorneys and their clients made for the purpose of seeking or reflecting legal advice. *See* 8 Wigmore Evidence § 2292 at 554. The privilege "applies to communications by any corporate employee regardless of position when the communications concern matters within the scope of the employee's corporate duties and the employee is aware that the information is being furnished to enable the attorney to provide legal advice to the corporation." *Admiral Ins. Co.*, 881 F.2d at 1492 (citing *Upjohn*, 449 U.S. at 394). The attorney-client privilege also applies to communications with former employees because "[f]ormer employees, as well as current employees, may possess the relevant information needed by corporate counsel to advise the client with respect to actual or potential difficulties." *Id.* at 1493. Critically, the Ninth Circuit has emphasized that "there is no unavailability exception to the attorney-client privilege" – it bars discovery of attorney-client communications even when information provided to the attorney may not be discovered from another source. *Id.* at 1488.

For example, in *Admiral Ins. Co.*, a corporation engaged outside counsel to conduct interviews of company employees regarding its investigation into potential securities laws violations. *Id.* at 1489. One of the employees interviewed by outside counsel invoked his privilege against self-incrimination when noticed for a deposition in civil litigation brought against the company. *Id.* In response, plaintiffs sought production of the statements the

employee had given to the corporation's counsel. *Id.* The Ninth Circuit rejected plaintiff's request, holding that the statements given to the corporation's counsel were "protected unequivocally by the attorney-client privilege." *Id.* at 1490. Quoting *Upjohn*, the Court recognized, as DAPs argue here, that "the privilege only protects disclosure of communications; it does not protect the disclosure of the underlying facts by those who communicated with the attorney." *Id.* at 1493. Thus, the Ninth Circuit explained that in the typical circumstance, "the adverse party could discover the information contained in the [interviews] *by deposing the employees*." *Id.* (emphasis added).

Although, as a result of the employee's decision to invoke the *fifth amendment,* the "plaintiffs' ability to discover the underlying facts may be impeded," this did not justify creating an unavailability exception to the attorney-client privilege that would have allowed the plaintiffs to discover the contents of outside counsel's interviews. *Id.* "An unavailability exception to the privilege would force counsel to warn their clients against communicating sensitive information for fear of subsequent forced disclosure. Here, but for the attorney-client privilege, [the corporation] might not have directed [the employee] to speak to counsel for fear of creating a transcribed statement for plaintiffs' benefit." *Id.* at 1495. Allowing the plaintiffs to discover the contents of the privileged interview because the employee himself could not be deposed "either would destroy the privilege or render it so tenuous and uncertain that it would be 'little better than no privilege at all.'" *Id.* at 1495 (quoting *Upjohn*, 449 U.S. at 353); *see also, Upjohn,* 449 U.S. at 396 (finding plaintiff "was free to question the employees who communicated with [in-house] and outside counsel" and that although it would be more convenient if, rather than deposing the employees, the privileged results of the internal investigation could be discovered, "such considerations of convenience do not overcome the policies served by the attorney-client privilege.")

Application of these principles here mandates finding that the contents of the Sullivan and Faegre Memos are protected from disclosure by the attorney-client privilege. Instead of attempting to force the Thomson Defendants' Rule 30(b)(6) representative to testify about the privileged Sullivan and Faegre interviews, DAPs may discover facts by deposing former

employees directly. That is exactly what DAPs have done. In addition to deposing over one-hundred individuals who worked for the Thomson Defendants' alleged co-conspirators, they have deposed current or former Thomson Consumer employees Jack Brunk, Tom Carson, Jackie Taylor-Boggs, J.P. Hanrahan, Alex Hepburn, and Jack Hirschler and a French court has reserved dates in March of former Thomson SA employees Emeric Charamel, Christian Lissourges, Agnes Martin, and Didier Trutt.[3] (Jan. 22, 2015 Email from C. Benson, attached as **Ex. 2**.) Accordingly, DAPs will soon depose former Thomson SA employees from whom they may directly discover potentially relevant facts.[4] But even if these individuals could not be deposed by DAPs, the Ninth Circuit's holding in *Admiral Ins. Co.* mandates that the contents of the Sullivan and Faegre Memos may not be discovered by DAPs under any circumstances. *Admiral Ins. Co.*, 881 F.2d at 1488.

The fact that DAPs seek to discover the contents of the Sullivan and Faegre Memos through a Rule 30(b)(6) deposition instead of through production of the memos themselves does not change this result. As the *Admiral Ins. Co.* Court emphasized, if exceptions to the privilege are created corporate counsel will be forced "to warn their clients against communicating sensitive information for fear of subsequent forced disclosure" and counsel will forego creating memoranda summarizing the results of internal investigations out of fear that they will be forced to disclose their sensitive, otherwise privileged contents during a Rule 30(b)(6) deposition. *Id*. at 1494; *Hickman v. Taylor*, 329 U.S. 495, 512-13 (1947) ("forcing an attorney to repeat or write out all that witnesses have told him and to deliver the account to his adversary gives rise to grave dangers of inaccuracy and untrustworthiness. No legitimate purpose is served by such production."). Such a Rule 30(b)(6) deposition privilege exception "either would destroy the privilege or render it so tenuous and uncertain that it would be little better than no privilege at

[3] Of course nothing prevented DAPs from identifying additional former employees of the Thomson Defendants to depose, but assuming the French depositions go forward, DAPs will have deposed all of the individuals they identified for depositions.

[4] Assuming these dates hold, DAPs will depose three French witnesses the Thomson Defendants' counsel interviewed in May 2014, plus Mr. Lissorgues. (*See* DAPs' Mot. at 3.)

all." *Admiral Ins. Co.*, 881 F.2d at 1495. Consistent with Ninth Circuit authority, the Court should bar DAPs from discovering from the Thomson Defendants the contents of the Sullivan and Faegre Memos.

B. The Sullivan and Faegre Memos are Protected Opinion Work Product.

First recognized in *Hickman v. Taylor*, 329 U.S. 495 (1947), the work product doctrine provides that a "party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial" unless "the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means." Fed.R.Civ.P. 26(b)(3)(A). Under Ninth Circuit law, the level of protection provided depends on whether the relevant materials constitute fact or opinion work product. If the work product "contains only non-privileged facts and a party satisfies the substantial need and undue hardship elements, a court may order discovery of the relevant materials, known as fact work product." *SEC v. Berry*, 2011 WL 825742 *8 (N.D. Cal. Mar. 7, 2011). "However, courts must further protect against the disclosure of 'opinion work product' – that is, the mental impressions, conclusions, opinions, or legal theories of a party concerning the litigation. Under Ninth Circuit law, such opinion work product is discoverable only if it is at issue in the case and the need for the material is compelling." *Id*. (internal quotations and citations omitted); *see also Holmgren v. State Farm Mut. Auto. Ins. Co.*, 976 F.2d 573, 577 (9th Cir. 1992).

The Sullivan and Faegre Memos, as well as Ms. Ehret's impressions of the limited number of interviews she attended of former Thomson SA employees in May 2014, are classic opinion work product and thus may not be discovered because the mental impressions of the Thomson Defendants' attorneys are not at issue in this litigation. *SEC v. Berry*, 2011 WL 825742 at 9; *see also O'Conner v. Boeing North America*, 216 F.R.D. 640, 643 (C.D. Cal. 2003) (citing cases stating that an attorney's witness interview notes and memoranda are opinion work product). For example, in *Upjohn Co.*, the Supreme Court considered whether attorney's notes from employee interviews were protected from disclosure. 449 U.S. at 400-402. The Court held that the attorney's mental impressions qualified as work product, and also that the work product

doctrine protected from disclosure the underlying facts contained within the notes and reports to the extent that the facts were only preserved in the minds of the attorneys who conducted the interviews and subsequent writings they prepared. *Id*. The Court noted that the party seeking disclosure in that case cited to language from *Hickman* in which the Court recognized that there might be certain circumstances where facts embedded in written materials prepared by an adversary's counsel could be discovered. *Id*. at 399. The Court emphasized, however, that this language from *Hickman* "did not apply to 'oral statements made by the witness . . . whether presently in the form of [the attorney's] mental impressions or memoranda.' As to such material the Court did "not believe that any showing of necessity can be made under the circumstances of this case to justify production . . . Forcing an attorney to disclose notes and memoranda of witnesses' oral statements is particularly disfavored because it tends to reveal the attorney's mental processes," and that the memoranda are afforded "special protection." *Id.* at 399-400 (*quoting Hickman,* 329 U.S. at 513 ("the statement would be [the attorney's] language, permeated with his inferences")); *see also* Fed. R. Civ. P. 26 1970 advisory committee's note ("The *Hickman* opinion drew special attention to the need for protecting an attorney against discovery of memoranda prepared from recollection of oral interviews. The courts have steadfastly safeguarded against disclosure of lawyers' mental impressions and legal theories.").

Similarly, in *Mitchell Engineering v City and County of San Francisco*, the plaintiff moved to compel production of witness interview notes. *See* 2010 WL 1853493, at *1 (N.D. Cal. May 6, 2010). The district court held that the notes constituted protect attorney work protect, and cited *Hickman,* 329 U.S. at 508, for the proposition that "an investigator's notes of witness interviews … are likely to be permeated with the investigator's own impressions and possibly even attorney theories or strategies, and are therefore protected from discovery." *Id.* Like the DAPs here, the plaintiff sought to circumvent the work product doctrine by conducting a deposition of the investigator "regarding the facts he learned through his investigation and his interviews with various witnesses." *Id*. at 2. Judge Illston rejected the request holding that "it would be unworkable for [the plaintiff] to re-depose [the investigator] and ask him to list the facts he learned during his investigation." *Id*. While the plaintiff was free to attempt to discover these

facts by deposing the underlying witnesses themselves, he could not obtain them by deposing the opposing party's investigator. *Id.*; s*ee also S.E.C. v. Morelli*, 143 F.R.D. 42, 47 (S.D.N.Y. 1992) (proposed 30(b)(6) deposition was an impermissible attempt to inquire into the mental processes and strategies of the Securities and Exchange Commission and was thus barred by the work-product privilege).

The Sullivan and Faegre Memos and Ms. Ehret's impressions of the limited number of interviews she attended of former Thomson SA employees in May 2014 constitute opinion work product because they do not reflect verbatim recitations of the interviewees' own words, but instead constitute the attorneys' thought processes in recalling, interpreting, and analyzing the interviews. (Roberts Decl. at ¶¶ 4-5, 8-9.) And the very questions counsel asked and the issues discussed with the witness reflect mental impressions, opinions, and strategy of the Thomson Defendants' counsel. *Mitchell Engineering*, 2010 WL 1853493, at *1; *In re Linerboard Antitrust Litig.*, 237 F.R.D. 373, 386 (E.D. Pa. 2006) (party could not discover facts learned by opposing counsel during internal investigation because those facts were "thoroughly intertwined" with attorney's mental impressions and the questions the attorney chose to ask to elicit those facts, which were themselves "core work product.") As the *Upjohn* Court recognized, because they will necessarily be inextricably intertwined with an attorney's protected opinions and mental impressions, oral statements made by a witness to an attorney may not be discovered from the attorney or the attorney's client, but instead must be discovered from the witness. *Upjohn*, 449 U.S. at 396, 400-2; *In re Linerboard Antitrust Litig.*, 237 F.R.D. at 386 (finding that "[i]t is hard to conceive of a circumstance in which an attorney's mental impressions would be more thoroughly intertwined with facts than in the counsel's recollection of an internal investigation."). Thus, there is no way to separate the "facts discussed during each interview,"[5] as DAPs seek in their motion, from the attorneys' mental impressions, thought processes, and strategy in selecting the subject matter discussed and questions posed during the interviews.[6]

[5] (*See* DAPs' Mot. at 7.)

[6] As noted above, nor are DAPs entitled to "the identify of each person interviewed" (DAPs' Mot. at 7) because such information is protected by the work product doctrine.

Barring "exceptional" circumstances when the facts are not available from any other source, courts have rejected attempts to use "a Rule 30(b)(6) witness to discover facts within an attorney's knowledge without asking counsel directly." *In re Linerboard Antitrust Litig.*, 237 F.R.D. at 380. In *In re Linerboard Antitrust Litig.*, the plaintiffs, like the DAPs here, sought to conduct a Rule 30(b)(6) deposition of one of the defendants regarding facts it discovered during its internal investigation regarding alleged anticompetitive conduct. *Id*. at 378-380. The plaintiffs argued that as part of the Rule 30(b)(6) designee's deposition preparation, the designee "should be required to speak with [defendant's counsel] and educate himself with all facts [counsel] recalls from the internal investigation." *Id*. at 379. The defendant objected, arguing that answering such questions would necessarily require it to divulge privileged and work product protected information. *Id*. at 378.

The court agreed with the defendant, finding that "any facts learned during [counsel's] internal investigation [were] so intertwined with mental impressions that it amounts to opinion work product and is, therefore, not subject to discovery." *Id*. at 379. The court explained that if a Rule 30(b)(6) designee is required to become educated with all facts within the corporation's attorneys' knowledge, a "Rule 30(b)(6) deposition will become the functional equivalent of a deposition of [counsel]" regarding all information counsel learned while serving her client. *Id*. at 384.[7] Finally, the court emphasized that it was concerned about the accuracy of information that might be gleaned about the internal investigation, since the reliability of information obtained during an internal interview "is subject to many factors, including interview conditions, delays in recording the interviews, and the attorney's editorial discretion." *Id*. at 386 (quoting *In re Grand Jury Investigation*, 599 F.2d 1224, 1231 (3rd Cir. 1979).) Accordingly, the court held that the

[7] The *Linerboard* court also noted that opposing counsel may only be deposed if: (1) no other means exist to obtain the information; (2) the information sought is relevant and not privileged; and (3) the information sought is crucial to preparation of the case. *Id*. at 385 (citing *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986).) These factors were not satisfied because the plaintiffs were free to depose the individuals who were interviewed by defense counsel and plaintiffs had failed to establish that the information they sought was crucial to the preparation of their case. *Id*. at 385-87.

defendant was not required to educate its Rule 30(b)(6) designee about all facts the corporation's counsel learned during its internal investigation. *Id*. at 379-80, 390.

The Court should apply the same principles in this case and deny DAPs' motion. Any facts learned by Sullivan and Faegre during their internal investigations are so intertwined with the Thomson Defendants' attorneys mental impressions that they amount to opinion work product that may not be discovered because they are not at issue in this litigation. *Holmgren v. State Farm Mut. Auto. Ins. Co.*, 976 F.2d at 577. Moreover, even if the Court determined that this information constituted mere fact work product – which it does not – DAPs cannot establish that they have a "substantial need" for information that is otherwise available to them through depositions of individual fact witnesses. *See* Fed.R.Civ.P. 26(6)(3). Nor can DAPs establish that they are entitled to the functional equivalent of a deposition of the Thomson Defendants' attorneys. *Shelton*, 805 F.2d at 1327.

C. The Thomson Defendants' Rule 30(b)(6) Representative Should Not Be Compelled to Testify Regarding Statements of Former Employees.

Even if the attorney-client privilege and the work product doctrine did not preclude the DAPs from discovering the contents of the Sullivan and Faegre Memos – which they do – the Thomson Defendants should not be compelled to adopt statements made by former employees as binding Rule 30(b)(6) testimony. While the Ninth Circuit has not decided the issue, other courts have held that the testimony of the Rule 30(b)(6) representative binds the corporation, and thus, during a Rule 30(b)(6) deposition the deposing party is entitled to discover the "corporation's positions." *Louisiana Pac. Corp. v. Money Market 1 Institutional Investment Dealer et al.*, 285 F.R.D. 481, 487 (N.D. Cal. 2012). However, it is well-settled that the testimony of former employees does not bind a corporation. *See, e.g., EEOC v. Dana Corp.*, 202 F.Supp.2d 827, 830 (N.D. Ind. 2002); *Orlowski v. Dominick's Finer Foods, Inc.*, 937 F.Supp. 723, 728 (N.D. Ill. 1996); *Durham v. Advance Stores Co. Inc.*, 2007 WL 2903206, *1 (S.D. Miss. Sept. 30, 2007) ("former employee's statements cannot bind the corporation and are not excluded from the hearsay rule as admissions"). Thus, the Thomson Defendants' Rule 30(b)(6) designee is not required to adopt as binding corporate testimony statements that were made by former employees

during privileged interviews. Again, to the extent the DAPs wish to discover information possessed by former employees of the Thomson Defendants, DAPs have been afforded ample opportunity to depose such individuals.

D. The Cases Cited By DAPs Do Not Require the Thomson Defendants' Rule 30(b)(b) Designee to Review and Testify About the Contents of the Sullivan and Faegre Memos.

The cases cited by DAPs do not support the proposition that a party may use a Rule 30(b)(6) deposition to compel the opposing party to testify about the contents of privileged, work product protected interview memoranda that were prepared for purposes of providing legal advice to a corporation. Indeed, if a Rule 30(b)(6) deposition could be used for such a purpose the strong privilege and work product protections the *Upjohn* Court emphasized would be effectively destroyed.

DAPs rely heavily on *Sprint Communications Co., L.P. v. TheGLOBE.Com, Inc.*, but it does not require the Thomson Defendants' designee to testify about the contents of the Sullivan and Faegre Memos. In that case, Sprint filed a patent infringement suit alleging that the defendants infringed its patents. 236 F.R.D. 524, 526 (D. Kan. 2006). The defendants sought to conduct a Rule 30(b)(6) deposition of Sprint regarding the facts surrounding the preparation and filing of the patents and Sprint filed a motion for protective order arguing that the employee inventor had died and the only other individuals with knowledge about the noticed topics were in-house Sprint attorneys. *Id*. at 526-27. Sprint asserted that a deposition of these attorneys was improper because there is a general prohibition against depositions of opposing counsel and "all information pertaining to the subjects listed in the Notice are protected from disclosure by attorney-client privilege." *Id*. at 527. The Court rejected Sprint's argument, stating that "[w]hile it is conceivable that every relevant piece of information regarding 'preparing, filing and revising' Sprint's Patents could be found as privileged and protected communications, Sprint has not established this proposition in its briefing." *Id*. at 529. The Court ordered Sprint to prepare a 30(b)(6) designee to testify about non-privileged information, but also recognized that while preparing its designee "counsel may wish to exercise caution in preparing the witness or witnesses with privileged information or documents, otherwise the privilege may be waived." *Id*.

This is exactly what the Thomson Defendants and their counsel did to prepare for the Rule 30(b)(6) deposition. Ms. Ehret spent over 100 hours reviewing non-privileged sources to prepare to testify about over 35 highly-detailed topics regarding a business the Thomson Defendants exited ten years ago. As a result of her diligent preparation, Ms. Ehret testified at length about the noticed topics even though no current employees of the Thomson Defendants possess detailed knowledge about the noticed topics. However, the Thomson Defendants' Rule 30(b)(6) designee was not obligated to review or be prepared to testify about the results of the Thomson Defendants' privileged interviews of their former employees. Neither *Sprint Communications*, nor any other case cited by DAPs holds otherwise. *See e.g. Great American Ins. Co. v. Vegas Construction Co., Inc.*, 251 F.R.D. 534, 541 (D. Nev. 2008) (ordering party to produce adequately prepared Rule 30(b)(6) designee, but not addressing whether corporation is obligated to testify regarding privileged internal investigation).

Finally, DAPs' request for attorney's fees is wholly without merit. Such sanctions are only granted where the opposing party's objections are not "substantially justified." Fed. R. Civ. P. 37(a)(5)(A)(ii). Based on the authority discussed above, the Thomson Defendants have in good faith refused to disclose the contents of the privileged, work product protected Sullivan and Faegre interviews. As such, the Thomson Defendants are more than "substantially justified" in opposing this motion to compel, and sanctions are not warranted. *See Santana Row Hotel Partners, L.P. v. Zurich Am. Ins. Co.*, 2007 WL 1168677, at *3 (N.D. Cal. Apr. 18, 2007); *Palmer v. Stassinos*, 2005 WL 3868003, at *5 (N.D. Cal. May 18, 2005) (request for attorney's fees denied where defendant made "valid objections" to plaintiffs' discovery requests); *Devaney v. Continental Am. Ins. Co.*, 989 F.2d 1154, 1163 (11th Cir. 1993) ("An individual's discovery conduct should be found 'substantially justified' under Rule 37 if it is a response to a genuine dispute, or if reasonable people could differ as to the appropriateness of the contested action.").

IV. CONCLUSION

For the foregoing reasons, the Sullivan and Faegre Memos and Ms. Ehret's impressions of the limited number of May 2014 interviews of former Thomson SA employees are protected from

disclosure by the attorney-client privilege and the work product doctrine. The DAPs' motion to compel should be denied.

Dated: January 27, 2015

Respectfully submitted,

/s/ Kathy L. Osborn

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Attorneys for Defendants Thomson Consumer Electronics, Inc. and Thomson SA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,

This Document Relates to:

Electrograph Systems, Inc. et al. v. Technicolor SA, et al., No. 13-cv-05724;

Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust v. Technicolor SA, et al., No. 13-cv-05261;

Best Buy Co., Inc., et al. v. Technicolor SA, et al., No. 13-cv-05264;

Interbond Corporation of America v. Technicolor SA, et al., No. 13-cv-05727;

Office Depot, Inc. v. Technicolor SA, et al., No. 13-cv-05726;

Costco Wholesale Corporation v. Technicolor SA, et al., No. 13-cv-05723;

No. 07-cv-5944-SC
MDL No. 1917

DECLARATION OF JEFFREY S. ROBERTS IN SUPPORT OF THOMSON DEFENDANTS' OPPOSITION TO DIRECT ACTION PLAINTIFFS' MOTION TO COMPEL 30(b)(6) TESTIMONY

P.C. Richard & Son Long Island Corporation, et al. v. Technicolor SA, et al., No. 31:cv-05725;

Schultze Agency Services, LLC, o/b/o Tweeter Opco, LLC, et al. v. Technicolor SA, Ltd., et al., No. 13-cv-05668;

Sears, Roebuck and Co. and Kmart Corp. v. Technicolor SA, No. 3:13-cv-05262;

Target Corp. v. Technicolor SA, et al., No. 13-cv-05686

Tech Data Corp., et al. v. Hitachi, Ltd., et al., No. 13-cv-00157

Dell Inc. v. Hitachi Ltd., No. 13-cv-02171;

Sharp Electronics Corp., et al. v. Hitachi, Ltd., et. al., No. 13-cv-01173

ViewSonic Corporation v. Chunghwa Corp., et al., No. 14-cv-02510

I, Jeffrey S. Roberts, hereby declare as follows:

1. I am currently an attorney with the law firm Faegre Baker Daniels LLP, counsel for Defendants, Thomson SA and Thomson Consumer Electronics, Inc. ("Thomson Consumer") (collectively, "Thomson Defendants"). I am an active member in good standing of the bars of the State of Colorado and am admitted to practice *pro hac vice* before the United States District Court for the Northern District of California. I make this declaration in support of Thomson Defendants' Opposition to Direct Action Plaintiffs' Motion to Compel 30(b)(6) Testimony of the Thomson Defendants. The statements contained in this declaration are based on my personal knowledge and, if called as a witness, I could competently testify to the following facts.

2. Upon receiving a subpoena from the United States Department of Justice ("DOJ") and notice from the European Commission ("EC") regarding those agencies' investigations into potentially anticompetitive conduct in the cathode ray tube ("CRT") industry, in late 2007, the

Thomson Defendants engaged the outside law firm Sullivan and Cromwell LLP ("Sullivan") to conduct an internal investigation into the Thomson Defendants' participation, if any, in the alleged conduct.

3. So that it could provide legal advice to the Thomson Defendants and assist them in responding to the EC and/or DOJ, Sullivan conducted a series of interviews with then current or former employees of the Thomson Defendants.

4. The Sullivan attorneys selected the subjects addressed and questions posed during the interviews and then, after the interviews were completed, prepared memoranda which summarized the results of the interviews based on the attorneys' understanding and judgments of which comments made by the attorneys and interviewees were important and potentially legally significant ("Sullivan Memos").

5. I have reviewed the Sullivan Memos and they are not verbatim records of the interviews, do not contain any clearly delineated "fact" sections, and reflect the mental impressions, opinions, and conclusions of the attorneys regarding the interviews, including the legal import of the information the interviewees provided.

6. In May 2014, as part of its defense of the instant actions, the Thomson Defendants' current outside law firm, Faegre Baker Daniels LLP ("Faegre") conducted a limited number of interviews of certain former employees of Thomson SA. I participated in these interviews.

7. Thomson Consumer's General Counsel, Ms. Meggan Ehret, was also present during some of these interviews.

8. The Faegre attorneys selected the subjects addressed and questions posed during the interviews and then, after the interviews were completed, prepared memoranda which summarized the results of the interviews based on the attorneys' understanding and judgments of which comments made by the attorneys and interviewees were important and potentially legally significant ("Faegre Memos").

9. I was involved in the preparation of the Faegre Memos and they are not verbatim records of the interviews, do not contain any clearly delineated "fact" sections, and reflect the

mental impressions, opinions, and conclusions of the attorneys regarding the interviews, including the legal import of the information the interviewees provided.

10. Since discovery against the Thomson Defendants in these actions began, the Thomson Defendants have produced to the Plaintiffs over 283,000 bates labeled pages of documents. Because many of these documents were produced in native format with a single bates number and many of these native files are twenty pages or longer, the Thomson Defendants have likely produced over 1 million pages of documents.

11. Since discovery against the Thomson Defendants in these actions began, the plaintiffs have deposed the following current or former employees of Thomson Consumer: (1) Mr. Jack Brunk; (2) Mr. Tom Carson; (3) Mr. J.P. Hanrahan; (4) Mr. Alex Hepburn; (5) Mr. Jack Hirschler; and (6) Ms. Jackie Taylor-Boggs.

12. Attached hereto as **Exhibit 1** is a true and accurate copy of a January 22, 2015 email from Mr. Craig Benson.

13. Attached hereto as **Exhibit 2** are true and accurate copies of excerpts of the January 8-9, 2015 Fed.R.Civ.P. 30(b)(6) deposition of the Thomson Defendants.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed this 27th day of January 2015, at Denver, Colorado.

/s/ Jeffrey S. Roberts

EXHIBIT 2

Subject: French depositions

From: "Benson, Craig A" <cbenson@paulweiss.com>
Date: January 22, 2015 at 5:10:02 PM EST
To: "Osborn, Kathy L." <Kathy.Osborn@faegrebd.com>
Cc: "Gallo, Kenneth A" <kgallo@paulweiss.com>
Subject: French depositions

Kathy:

We have been informed by our French counsel that the clerk at the Paris court responsible for overseeing the letters of request has received the letters of request and has reserved a courtroom on March 6, 9, and 10 for our requested depositions. We understand that a judge will be assigned to the matter within one or two weeks, and that the judge will issue witness notices shortly thereafter.

We would therefore like to confer with you, if you intend to represent the witnesses, to learn about their availability on those dates.

Many thanks,
Craig

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EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:	)	
CATHODE RAY TUBE (CRT)	)	CASE NO. 07-cv-05944 SC
ANTITRUST LITIGATION	)	MDL No. 1917

VIDEOTAPED
DEPOSITION OF MEGGAN EHRET
VOLUME II

The deposition upon oral examination of MEGGAN EHRET, a witness produced and sworn before us, Tamara J. Brown, CSR, RMR, CRR, Notary Public in and for the County of Marion, and Janine Ferren, RPR, CSR, CRR, Notary Public in Hamilton County, State of Indiana, taken on behalf of the Plaintiffs, at the offices of Faegre Baker & Daniels, 300 North Meridian Street, Indianapolis, Marion County, Indiana, on the 9th day of January, 2015, pursuant to the Federal Rules of Civil Procedure with written notice as to time and place thereof.

A There are two emails that appear to be exchanged between the two individuals. Both emails are dated April 24th, 2002. 10:17:39 10:17:41 10:17:44

Q And to the best of your knowledge, is the underlying document, the one that we have had translated, is that a true and correct copy of a document as maintained in the files of Thomson SA? 10:17:48 10:17:51 10:17:54 10:17:58 10:18:01

MS. OSBORN: Object to form. 10:18:02

A I can tell you from the Bates label in the bottom right-hand corner with TSA that this was a file in TSA's files that was reviewed and produced to you. 10:18:02 10:18:04 10:18:07 10:18:12

Q And is this a document that was created and maintained in the ordinary course of business at Thomson SA? 10:18:13 10:18:15 10:18:18

MS. OSBORN: Object to form. Calls for a legal conclusion. 10:18:19 10:18:20

A I can only tell you about this document based on the Bates label information in the bottom right-hand corner, that it was a document in Thomson SA's files that was in turn produced to you in this litigation. 10:18:21 10:18:24 10:18:27 10:18:30 10:18:32

Q You've told us that Agnes Martin regularly communicated with her colleagues at Thomson by 10:18:33 10:18:36

email. Correct? 10:18:39

MS. OSBORN: Object to form. Mischaracterizes former testimony. 10:18:40 10:18:41

A I have told you that Ms. Martin, based on my review of the documents, Ms. Martin -- reasonably available to Thomson SA -- Ms. Martin communicated using email to internal Thomson SA employees. 10:18:44 10:18:46 10:18:48 10:18:52 10:18:56

Q Would you say you have reviewed dozens of emails that Ms. Martin sent to internal Thomson employees? 10:18:56 10:18:59 10:19:01

MS. OSBORN: Object to form. Argumentative. 10:19:02 10:19:03

A Very difficult for me to quantify, given the -- that there have been numerous emails that I have seen from Ms. Martin in Thomson SA's files to other Thomson SA employees. 10:19:05 10:19:10 10:19:12 10:19:16

Q Do you think it's fewer than a dozen emails that you reviewed from Ms. Martin to other Thomson employees? 10:19:17 10:19:20 10:19:23

MS. OSBORN: Object to form. Calls for speculation. 10:19:24 10:19:25

A Your original question to me was dozens and dozens, if I remember. 10:19:26 10:19:29

Q No, it was dozens. 10:19:30

A Dozens. 10:19:32

Q Right. 10:19:33

A So that, so now you're asking me did I read 12 emails from her? 10:19:33 10:19:35

Q Do you think it's fewer than a dozen? 10:19:37

MS. OSBORN: Same objections. 10:19:40

A Yeah, I believe I reviewed more than 12 emails from Ms. Martin in the files of Thomson SA to other Thomson SA employees. 10:19:41 10:19:44 10:19:49

Q Do you believe you read more than two dozen emails? 10:19:50 10:19:52

MS. OSBORN: Object to form. Calls for speculation. 10:19:55 10:19:56

A I can't, because I have spent, easy to quantify hours, certainly more than that, but just preparing for this deposition, attending the other depositions, easy to quantify, more than 130 hours. 10:19:57 10:20:00 10:20:03 10:20:06 10:20:10

If we begin to spend all the time that I have spent generally reviewing the documents, I can't -- I have not paid attention during my deposition prep to counting any records and counting and logging and trying to memorize how many of any one individual's emails I've reviewed. 10:20:10 10:20:12 10:20:14 10:20:16 10:20:20 10:20:23 10:20:26

Q Including Ms. Martin? 10:20:29

A She was among the individuals with emails that I have reviewed. 10:20:32 10:20:35

Q And you're unable to say whether you reviewed two dozen of her emails in the hundreds of documents you purport to have reviewed in preparation for this deposition? 10:20:37 10:20:40 10:20:43 10:20:45

MS. OSBORN: Object to form. Asked and answered. Argumentative. 10:20:47 10:20:48

A You have asked me whether or not I have reviewed more than 24 records. 10:20:50 10:20:53

Q No, I haven't. 10:20:55

A Okay. 10:20:57

Q I just asked if you -- if you've reviewed two dozen. 10:20:58 10:21:02

A Have I read precisely 24 emails from Ms. Martin? 10:21:03

MS. OSBORN: Object to form. Same objections. 10:21:08 10:21:09

Q Do you think that you have read at least 24 emails from Ms. Martin in connection with your preparation for this deposition? 10:21:10 10:21:12 10:21:15

MS. OSBORN: Same objections. Asked and answered. 10:21:18 10:21:19

A Originally you asked me about emails between Ms. Martin and other Thomson SA employees. Are 10:21:21 10:21:24

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Q Okay. Are you in a position, as the representative of Thomson Consumer here today, to confirm whether this information was shared by Thomson Consumer with Mr. Shibata, Mr. Iwamoto, and Mr. Usuda on August 19, 2003? 15:37:32 15:37:34 15:37:35 15:37:37 15:37:41

MS. OSBORN: Object to form. 15:37:50

A I would direct you to the deposition testimony of either Mr. Hanrahan or Mr. Hirschler, perhaps both of them. But I know at least one of them testified as to this document Bates-labeled MTPD-057683E and can -- are in a better position to provide you with information. Thankfully, today I did not memorize their entire or all of the 1300 pages of deposition testimony by Thomson Consumer former or current employees in preparation for today. I certainly did review it. I also attended live, five of those depositions. 15:37:51 15:37:53 15:37:57 15:37:59 15:38:05 15:38:12 15:38:16 15:38:19 15:38:25 15:38:27 15:38:29 15:38:32

Q But is your answer that, beyond what you have already told me, beyond referring me to those deposition transcripts, you're not in a position to confirm or deny the contents of that meeting? 15:38:32 15:38:34 15:38:37 15:38:40

MS. OSBORN: Object to form. 15:38:44

Q I think it's a simple question. 15:38:45

MS. OSBORN: Object to form, asked and 15:38:47

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answered. 15:38:48

A I think I can answer it the same way. I can refer you out to their transcripts. 15:38:49 15:38:52

Q Okay. Next document I'd like to mark is 4820 -- it's previously been marked as 5828, 5828E. It's document bearing Bates label MTPD-223790 through 792, and the translation of that. 15:38:55 15:39:12 15:39:17 15:39:23

A I have completed review of Deposition Exhibit 5828E. I didn't read -- 15:42:04 15:42:05

Q You didn't read the Korean version? 15:42:09

A I did not. 15:42:13

Q Okay. 15:42:14

A I skipped that. 15:42:14

Q Or maybe it's Japanese. 15:42:14

MS. STEWART: Japanese. 15:42:17

Q Japanese, sorry. 15:42:17

If I could direct you once again to your -- to Exhibit 8111, your supplemental responses to plaintiff's first set of interrogatories, you have identified in your second chart in response to Interrogatory 8 a meeting occurring on August 15th, 2002, in the United States between Shinichi Iwamoto of MTPD and J.P. Hanrahan of Thomson; is that correct? 15:42:18 15:42:19 15:42:23 15:42:25 15:42:31 15:42:34 15:42:42 15:42:51

MS. STEWART: Objection, mischaracterizes 15:42:53

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the document. 15:42:54

A I see that in Thomson Consumer's supplemental answer to Interrogatory 8, there is an entry on there dated 15 August 2002, with a location in the U.S. that identifies two participants in meetings and/or communications. 15:42:55 15:42:57 15:43:01 15:43:05 15:43:09

Q And those two participants are Shinichi Iwamoto MTPD of J.P. Hanrahan of Thomson. Are we disagreeing about that? 15:43:13 15:43:19 15:43:24

A Thomson Consumer. 15:43:25

Q Thomson Consumer. 15:43:26

A If you add "Thomson Consumer," then -- then both those names appear there. 15:43:27 15:43:29

MS. STEWART: Sorry to interrupt. I would just like to object to this document to the extent it's characterizing MTPD as existing in August 15, 2002. The company did not yet exist. 15:43:32 15:43:33 15:43:35 15:43:39

MR. BENSON: You're objecting to Thomson Consumer's supplemental interrogatory responses? I just want to make sure which document you're objecting to. 15:43:42 15:43:44 15:43:46 15:43:49

MS. STEWART: Yes, or the testimony that's stating that MTPD was in existence prior to that. 15:43:50 15:43:52 15:43:54

MR. BENSON: Okay, you're -- okay. I don't 15:43:54

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know that you can object to testimony, but you're objecting to this document? Okay. 15:43:55 15:43:57

Q So now let's look back at the exhibit that I have just marked. 15:44:00 15:44:04

A This is 5828E? 15:44:07

Q Correct. If I could direct you to what appears to be the second email in this chain, it is from Shinichi -- do you see that the "from" line says "Iwamoto Shinichi"? 15:44:10 15:44:19 15:44:23 15:44:26

A I see, yes, an email that states it is from, I won't try to pronounce the name. 15:44:33 15:44:37

Q Okay. And it is to -- it's dated Thursday, August 15th, 2002; correct? 15:44:40 15:44:45

A I see that date. 15:44:46

Q And that is the same date that is included in Thomson Consumer's chart, 8/15/2002; correct? 15:44:47 15:44:50

A Same date in Thomson Consumer's chart. 15:44:54

Q Okay. And the subject matter is "Information exchange with Thomson"; correct? 15:44:55 15:44:57

A That is the subject of the email. 15:45:00

Q And this is -- the next line says, "To: President Nakamoto"; correct? 15:45:01 15:45:03

A I see those words on this page. 15:45:09

Q And the next line says, "Today, J.P. Hanrahan, Thomson's CRT sales GM, came, and we exchanged 15:45:09 15:45:13

Q Are we disagreeing about that? 15:53:41
MS. OSBORN: Object to form, argumentative. 15:53:43
A I just wanted to make sure I understood your question. 15:53:44 15:53:46
There is no column, there is no Bates label identified for any communication on 15 August 2002. 15:53:48 15:53:49 15:53:53
Q Thank you. 15:53:55
MS. OSBORN: Can we take a break? 15:53:55
MR. BENSON: I'm sorry? 15:53:57
MS. OSBORN: We're taking a break. I need to use the restroom. 15:53:58 15:54:00
MR. BENSON: Okay. 15:54:02
THE VIDEOGRAPHER: This ends disk 5. We are off the record. The time is 3:53 p.m. 15:54:03 15:54:04
(A recess was taken.) 15:54:09
THE VIDEOGRAPHER: This begins disk 6. We are on the record. The time is 4:06 p.m. 15:56:56 16:06:54
MR. BENSON: I just want to make a statement on the record first. 16:07:01 16:07:02
We've learned, in the course of this deposition but off the record, that Thomson's prior outside counsel, Sullivan & Cromwell, conducted interviews of then-current and former employees and prepared memoranda that 16:07:03 16:07:05 16:07:09 16:07:12 16:07:16

memorialized those interviews, and that the 30(b)(6) witness has not been educated on the contents of those interviews. 16:07:19 16:07:25 16:07:28
We have also learned that there were a limited number of interviews that Thomson's current law firm conducted with three of the French witnesses that we are currently trying to procure for depositions in this case. We have learned that Ms. Ehret sat in on a couple of those interviews. And we understand that Thomson's position is that information that was learned in those interviews is not information that is discoverable, and that Ms. Ehret is not revealing any facts learned during the course of those interviews as part of her testimony today. 16:07:31 16:07:34 16:07:38 16:07:40 16:07:43 16:07:50 16:07:56 16:07:58 16:07:58 16:08:01 16:08:04 16:08:07
I would like to get a statement on the record as to whether our understanding of those facts is clear. 16:08:14 16:08:15 16:08:17
MS. OSBORN: I'm rereading just to -- 16:08:19
You're correct. In the summary of the facts, I would note that the fact that we did not prepare Ms. Ehret on the content of those notes wasn't for a lack of diligence or lack of preparation, but that those notes contain confidential and privileged attorney-client 16:08:35 16:08:36 16:08:39 16:08:43 16:08:46 16:08:50

thoughts, memoranda, conclusions, and that they are not discoverable in this matter and, therefore, we did not prepare Ms. Ehret on them. She has not read them. 16:08:53 16:08:55 16:08:59 16:09:02
And our position, as I mentioned on the break, is that the law is very clear that you're not entitled to the information contained in that memoranda. You're entitled to pursue depositions of the four French witnesses that you've noticed and can learn facts from them. You seem to be well on your way of accomplishing that. And that is our position on these issues. 16:09:04 16:09:11 16:09:13 16:09:15 16:09:18 16:09:21 16:09:24 16:09:27
MR. BENSON: Okay. And we have decided, based on our discussions off the record, that -- we disagree with your position, as you know, and this is a subject that will be taken up separately, litigating it before the Court. And I believe you have represented that you will not take the position that our failure to bring the matter to the special master in the context of our deposition today, that will not constitute any waiver of our position that this witness has not been adequately prepared. And that, if you are not successful in your position that you may legally withhold this information, you will not 16:09:29 16:09:34 16:09:36 16:09:40 16:09:42 16:09:47 16:09:49 16:09:51 16:09:54 16:09:59 16:10:02 16:10:05 16:10:08

argue that you do not need to make Ms. Ehret available again at the time, educated with the facts that were contained in those interview memoranda and/or that she learned as part of her interviews with those three French witnesses. 16:10:11 16:10:14 16:10:18 16:10:21 16:10:24
Is that -- is my understanding correct on that point? 16:10:26 16:10:27
MS. OSBORN: It is correct, although I will say that we will argue at that time that, if the Court concludes that you're entitled to additional information, you will be limited to the time you have left for this deposition based on the discovery order in this matter. 16:10:28 16:10:30 16:10:32 16:10:34 16:10:36 16:10:41
MR. BENSON: Well, we will -- we will argue against that -- 16:10:43 16:10:44
MS. OSBORN: I understand. 16:10:45
MR. BENSON: -- because we have asked questions that the answers would have been comprehensive if she had been adequately prepared. So I think we're prepared to litigate that, and -- 16:10:46 16:10:47 16:10:48 16:10:55 16:10:55
MR. GALLO: And I believe this is the first time we're hearing that. 16:10:58 16:11:00
MR. BENSON: Yeah, this is the first time that you have actually made that additional 16:11:01 16:11:03

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Q Okay. 17:14:24
A So what Thomson Consumer did, in furtherance of 17:14:25
the sale of its CPT business to Videocon, was 17:14:27
create a limited liability company in the States 17:14:31
called Thomson Displays Americas, I believe. It 17:14:34
then transferred its CPT manufacturing and other 17:14:39
operations to that wholly owned subsidiary, 17:14:43
caused that wholly owned subsidiary to employ 17:14:46
certain employees of Thomson Consumer involved 17:14:49
in the CPT business. And then that entity was 17:14:53
sold to a Videocon entity, I'm not sure which 17:14:56
legal entity in the Videocon family that 17:14:59
acquired it. But that's the path for the U.S. 17:15:01
Thomson Consumer employees. 17:15:05
With respect to Thomson SA, at some point 17:15:06
in time, and you probably recall me testifying 17:15:10
that I couldn't remember exactly who employed 17:15:12
each person. There was a already-existing 17:15:14
European -- in certain countries, there was an 17:15:18
Italian entity, for example, there was a French 17:15:22
entity, for example, that employed the actual 17:15:25
people. Some of them are still employed by 17:15:27
Thomson SA. And I'm not exactly certain the 17:15:31
precise path that the employees traveled, 17:15:35
although I think the documents tell us, and I 17:15:37

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just don't have them memorized. But ultimately 17:15:40
the people, or certain people employed by 17:15:43
Thomson SA or certain European subsidiaries 17:15:46
working for the CPT business were then 17:15:49
transferred over to an entity that became owned 17:15:51
by Videocon. 17:15:54
Q Do you know approximately how many employees 17:15:59
were transferred? 17:16:01
MS. OSBORN: Object to form, calls for 17:16:03
speculation. 17:16:04
A Oh, gosh. I have not -- I've seen lists of 17:16:05
employees' names, but I did not bother to total 17:16:08
it or take note of how many pages or how long 17:16:11
any of that was. 17:16:15
Q Do you know if Jack Brunk from Thomson Consumer 17:16:19
went to work for Videocon? 17:16:24
A There is a list of Thomson Consumer employees 17:16:27
who move off. It would be really helpful for me 17:16:30
to see that particular list. But it is my 17:16:34
memory that Mr. Brunk transfers to employment of 17:16:36
an -- of a legal entity that is ultimately 17:16:41
wholly owned in some way, shape or form by a 17:16:43
Videocon entity. 17:16:47
MR. BENSON: I think I may be ready to take 17:16:48
a break, and I may be ready to -- 17:16:50

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THE VIDEOGRAPHER: We are off the record. 17:16:54
The time is 5:16 p.m. 17:16:54
(A recess was taken.) 17:17:00
THE VIDEOGRAPHER: We are back on record. 17:25:20
The time is 5:25 p.m. 17:25:44
17:25:47
FURTHER DIRECT EXAMINATION, 17:25:47
QUESTIONS BY DAVID M. PETERSON: 17:25:49
Q Good afternoon, Ms. Ehret. 17:25:50
A Hello 17:25:53
Q My name is David Peterson. I represent the 17:25:53
Circuit City Liquidating Trust. I have just a 17:25:56
few questions for you. Thank you for all of 17:25:58
your patience throughout the last two days; it's 17:25:59
greatly appreciated. 17:26:01
A Of course. 17:26:02
Q In preparing for today's deposition, were there 17:26:03
any current Thomson Consumer employees with 17:26:05
knowledge of relevant facts that you did not 17:26:08
interview? 17:26:11
A I do not believe there are any current Thomson 17:26:13
Consumer employees that have facts relevant to 17:26:15
this litigation. 17:26:22
Q That you did not have the chance to interview? 17:26:26
A That I did not speak to. I spoke to as many -- 17:26:28

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anytime anyone gave me a name, I went and 17:26:30
interviewed that individual. If they gave me 17:26:34
any names, I went and interviewed that 17:26:37
individual. I got to a point where no one had 17:26:39
any other additional suggestions of any current 17:26:41
Thomson Consumer employees that would have 17:26:44
information relevant to this litigation. 17:26:46
Q Did you take any notes during those interviews 17:26:48
in preparation for your -- today's deposition? 17:26:50
A I would have occasionally sent an email. I do a 17:26:54
lot of my stuff via email to my outside lawyers. 17:27:01
To the extent that I learned anything that I 17:27:05
thought was information that was helpful or 17:27:09
necessary, would have forwarded that along to 17:27:12
them. 17:27:14
Q In preparing for today's deposition, were there 17:27:15
any former Thomson Consumer employees with 17:27:16
knowledge of relevant facts that you did not 17:27:18
have the chance to interview? 17:27:20
A Oh, goodness. I mean, throughout the relevant 17:27:27
period, there were, I'm sure, substantial -- a 17:27:30
lot of employees by Thomson Consumer. I did not 17:27:32
speak to all individuals employed during the 17:27:34
relevant period by Thomson Consumer. I did try 17:27:37
to interview, and you are aware that I've 17:27:41

interviewed and attended the depositions of 17:27:45
Mr. Brunk; I did not attend Mr. Herschler's 17:27:48
deposition, I could not; Mr. Carson; 17:27:55
Mr. Hepburn; Mr. Hanrahan. I also spoke with 17:27:56
other former Thomson Consumer Electronics -- or 17:28:05
Thomson Consumer employees to determine if they 17:28:10
had any relevant information. 17:28:14
But if you're asking me if I interviewed 17:28:15
every Thomson Consumer employee or former 17:28:18
employee? I did not. 17:28:19
Q And I'm really asking if there's any former 17:28:21
Thomson Consumer employees who would have 17:28:25
substantial knowledge of relevant facts that you 17:28:27
did not have the chance to interview. 17:28:29
MS. OSBORN: Object to form, calls for 17:28:31
speculation. 17:28:32
A Based on my interviews of individuals as well as 17:28:34
my review of documents -- I mean, we could talk 17:28:38
about what "substantial" means -- but I tried to 17:28:41
get to those former employees of Thomson 17:28:45
Consumer that would have relevant information, 17:28:47
information relevant to this case, who are still 17:28:50
alive. 17:28:52
Q In preparing for today's deposition, were there 17:28:53
any current Thomson SA employees with knowledge 17:28:55

of relevant facts that you did not have the 17:28:58
opportunity to interview? 17:29:01
A Current Thomson SA employees? No. 17:29:03
Q And in preparing for today's deposition, were 17:29:05
there any former Thomson SA employees with 17:29:07
knowledge of relevant facts that you did not 17:29:10
have the opportunity to interview? 17:29:13
A When you say "did not have the opportunity to 17:29:15
interview," do you mean me personally in my 17:29:19
capac- -- in my preparation for my 30(b)(6) 17:29:22
today? 17:29:24
Q That's correct. 17:29:24
A In my capacity in preparation for my 30(b)(6), 17:29:25
yes, there are Thomson SA former employees who I 17:29:28
did not have the opportunity to -- to interview 17:29:32
in specific preparation for this deposition. 17:29:34
Q And to be clear, to the extent that you had 17:29:36
talked to any of the former Thomson SA employees 17:29:38
you were referring to in the previous question, 17:29:43
that information is not informing your testimony 17:29:45
as a 30(b)(6) witness; correct? 17:29:49
A Just so that I can restate that question so that 17:29:52
you check and make sure you understand what 17:29:56
you're asking me? 17:29:58
Q Please. 17:29:59

A There -- I did sit in on certain limited 17:30:00
interviews of former Thomson SA employees, and 17:30:05
at the time that those interviews were 17:30:11
conducted, I attended those meetings in my 17:30:13
capacity as in-house counsel for Thomson 17:30:16
Consumer, and it was not in preparation for this 17:30:20
two days of deposition on behalf of Thomson SA 17:30:26
or Thomson Consumer. I mean, I'm not trying to 17:30:30
make a legal -- I'm just saying that I'm 17:30:33
in-house employed by Thomson Consumer. 17:30:35
Q Thank you for the clarification. 17:30:37
And just to make sure the record's 17:30:38
extremely clear, regardless of what capacity you 17:30:40
were sitting in, whether in-house counsel or 17:30:44
versus in preparation for the deposition, you 17:30:48
have not intended to reveal any facts that were 17:30:51
learned in those meetings during your two-day 17:30:54
deposition; correct? 17:30:59
MS. OSBORN: Object to form. 17:31:00
A In those limited -- just so that we're on the 17:31:03
same page, in those limited interviews of former 17:31:06
Thomson SA employees, I am not disclosing any 17:31:09
facts unique -- I should say uniquely learned 17:31:15
from -- that I wouldn't have otherwise had from 17:31:18
any other source other than my attendance at an 17:31:21

interview conducted by Thomson Consumer and 17:31:26
Thomson SA's outside counsel, Faegre Baker 17:31:32
Daniels. If I otherwise knew of the information 17:31:34
and it was reasonably available to Thomson SA or 17:31:38
Thomson Consumer from a means or a source other 17:31:42
than those interviews, those particular limited 17:31:45
interviews, I would have testified to that 17:31:50
yesterday and today on behalf of whichever 17:31:52
entity it was relevant to. 17:31:54
Q To be clear, you did not speak with Agnes Martin 17:31:57
in preparation for today's deposition; correct? 17:32:03
MS. OSBORN: Object to form. Also object 17:32:05
to the extent that identity of anyone that we 17:32:07
interviewed or talked to is privileged. 17:32:10
THE WITNESS: Am I okay to answer? 17:32:14
MS. OSBORN: You're okay to answer to -- in 17:32:16
terms of preparation for today's deposition. 17:32:17
A In preparation for today's and yesterday's 17:32:19
deposition on behalf of Thomson SA, I did not 17:32:23
speak with Ms. Martin. 17:32:26
Q Did you attempt to speak with Ms. Martin in 17:32:28
preparation for your 30(b)(6) deposition? 17:32:31
MS. OSBORN: Asked and answered. 17:32:35
THE WITNESS: He's asking -- I think he's 17:32:36
asking -- 17:32:37

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REDIRECT EXAMINATION, 19:22:42
QUESTIONS BY CRAIG BENSON: 19:22:42
Q You did not speak with Agnes Martin in preparation for the deposition today; is that correct? 19:22:43 19:22:46 19:22:47
A As I testified when counsel for Circuit City asked me this question, and I think, just to make sure, I think you're asking me if I specifically, for preparation for these -- this testimony on behalf of either Thomson Consumer or Thomson SA, did I speak with Ms. Martin in connection with that preparation? As I testified earlier, no. 19:22:49 19:22:53 19:22:56 19:22:58 19:23:01 19:23:05 19:23:08 19:23:11
Q Okay. And you did participate in a discussion with Ms. Martin separately that wasn't part of what you're calling your preparation for this deposition; is that correct? 19:23:12 19:23:14 19:23:20 19:23:22
MS. OSBORN: Object to form. Also object to the extent it's privileged work product, and the identities of the individuals we interviewed are privileged. 19:23:24 19:23:26 19:23:29 19:23:32
A I did, as I testified earlier, attend a interview of Ms. Martin conducted by Thomson Consumer and Thomson SA's outside lawyers, Faegre Baker Daniels. 19:23:34 19:23:39 19:23:44 19:23:48

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Q Was that discussion in person? 19:23:50
I'm sorry, you're looking at your lawyer. 19:23:58
Was that discussion in person, Ms. Ehret? 19:24:00
MS. OSBORN: Object to form. Again, I think this goes beyond the scope of what -- 19:24:02 19:24:04
MR. BENSON: Well, your redirect -- your questions were specifically about Ms. Martin, so I'm entitled to know what meetings you had. 19:24:08 19:24:09 19:24:12
MS. OSBORN: They were, but it was based upon the information that was available to her. 19:24:15 19:24:16
Q Okay. Did you meet with Ms. Martin personally? 19:24:18
MS. OSBORN: Let me finish my statement. 19:24:22
You can answer that question. 19:24:24
A I met -- I attended an interview that was conducted in person with Ms. Martin. That interview was conducted by Thomson Consumer and Thomson SA's outside counsel, Faegre Baker Daniels. I attended that interview as I noted, and there's a distinction that we're drawing, at least, between that interview that I attended, which I attended as counsel for Thomson Consumer and Thomson SA, and not attended that -- I did not, in preparation for today's and yesterday's testimony on behalf of Thomson SA and Thomson Consumer, speak with Ms. Martin either live -- 19:24:25 19:24:32 19:24:34 19:24:38 19:24:41 19:24:45 19:24:48 19:24:50 19:24:59 19:25:04 19:25:07 19:25:09

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in -- not in person, nor over the phone. 19:25:14
Q Where was the meeting that you attended with Ms. Martin and Faegre Baker Daniels' counsel? 19:25:17 19:25:21
A When I met with -- when Faegre Baker Daniels interviewed Ms. Martin, that meeting occurred somewhere in or around Paris, France. 19:25:29 19:25:33 19:25:38
Q Okay. And am I correct that none of your testimony today -- in none of your testimony today are you revealing any facts that you learned in that meeting with Ms. Martin in France? 19:25:40 19:25:42 19:25:46 19:25:49 19:25:53
MS. OSBORN: Objection based on attorney-client privilege. 19:25:54 19:25:56
You can answer the question, however. 19:25:57
A That is -- that is correct. Although I have noted yesterday and today in answering anyone's question whether or not I was withholding information which Thomson SA or Thomson Consumer considers to be privileged or confidential when I gave those answers. 19:26:02 19:26:09 19:26:12 19:26:15 19:26:18 19:26:21
Q And you consider all of the information that Ms. Martin shared with you in that meeting to be privileged and confidential; is that correct? 19:26:23 19:26:26 19:26:29
MS. OSBORN: Object to form, calls for a legal conclusion. Her attorneys consider all of 19:26:31 19:26:32

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the information shared in that interview to be privileged. 19:26:35 19:26:38
And I direct you not to answer. 19:26:39
Q Okay. Well, no. The question is: Is there any information that you learned in that meeting that you are not taking the position here is privileged and confidential? And it may be that your lawyer has just answered the question for you, but I think that's a yes-or-no question. 19:26:43 19:26:46 19:26:48 19:26:51 19:26:53 19:26:55
MS. OSBORN: Object to form, asked and answered. And she -- she answered this earlier, I believe. 19:26:58 19:27:01 19:27:07
MR. BENSON: Well, then, she should have no problem answering it now. 19:27:08 19:27:11
MS. OSBORN: We can go through the transcript and find it. 19:27:13 19:27:14
MR. BENSON: Well, or she can just answer the question. 19:27:15 19:27:16
A I believe I can answer that question without revealing any privileged or confidential information. 19:27:17 19:27:19 19:27:21
To the extent that in my extensive preparation for testimony today on behalf of Thomson SA or on behalf of Thomson Consumer, I learned of information either from interviews 19:27:22 19:27:24 19:27:29 19:27:32

that I conducted of Thomson Consumer former and 19:27:37
current employees, documents that I reviewed in 19:27:41
the files of Thomson SA or Thomson Consumer, and 19:27:43
I learned about a fact, I identified that 19:27:45
information today. I did not, in other words, 19:27:51
Mr. Benson -- I think to answer your question, I 19:27:53
am not withholding information from you that I 19:27:56
may have learned from those other means, that 19:28:00
may have also been stated by Ms. Martin that, 19:28:04
because she stated it during a Faegre Baker 19:28:08
Daniels' interview, that I then claim the 19:28:10
information that I learned through another means 19:28:15
cannot now be disclosed. 19:28:18
Q I think you might be answering a more 19:28:19
challenging question than the one I am asking. 19:28:22
A Okay. 19:28:24
Q Which is: Information that Agnes Martin 19:28:24
transmitted in that meeting that you attended 19:28:27
with Faegre Baker Daniels in Paris, are you 19:28:31
taking the position that the information that 19:28:39
Ms. Martin shared with you in that meeting is 19:28:40
privileged, such that you are not testifying 19:28:43
about any information that you learned in that 19:28:44
meeting here today? 19:28:46
MS. OSBORN: Objection, asked and answered, 19:28:48

privileged. 19:28:49
You can answer the question. 19:28:50
A If I only or would have only known of that fact 19:28:55
because I happened to have attended as counsel 19:29:02
an interview of Ms. Martin conducted by Faegre 19:29:07
Baker Daniels, then I did not disclose that 19:29:13
information yesterday or today. However, if 19:29:17
there would have been a fact that I learned that 19:29:20
I separately, outside of that, would have known, 19:29:23
learned, found, discovered through another means 19:29:27
that was outside of that interview, then I would 19:29:30
have told you about that if it was relevant to a 19:29:32
question that you asked me yesterday or today on 19:29:36
behalf of Thomson SA or Thomson Consumer. 19:29:39
Q Fair enough. 19:29:42
A Did I answer that well? 19:29:42
Q I think -- I think you did, thank you. 19:29:44
When was the meeting that you attended with 19:29:45
Faegre Baker Daniels and Ms. Martin in Paris or 19:29:49
in or around Paris? 19:29:52
MS. OSBORN: Objection. I've given you 19:29:54
some leeway here, but I'm going to direct her 19:29:56
not to answer. You're just not entitled to know 19:29:59
these details about the privileged conversations 19:30:02
and communications we had -- 19:30:04

MR. BENSON: I'm entitled to know when they 19:30:06
occurred. 19:30:08
MS. OSBORN: -- with these former 19:30:08
employees. 19:30:10
MR. BENSON: I'm entitled to know when they 19:30:10
occurred. We asked about Ms. Martin, we've 19:30:12
asked for her location. I'm entitled to know 19:30:14
when these -- this discussion and this meeting 19:30:17
occurred. 19:30:18
MS. OSBORN: And she testified that we had 19:30:19
the short meetings, they wouldn't have talked to 19:30:21
her since. 19:30:23
MR. BENSON: No, let her -- let her answer 19:30:24
the question. 19:30:26
Q When did the meeting occur? 19:30:27
THE WITNESS: Are you instructing me not to 19:30:30
answer? 19:30:32
MS. OSBORN: I'm not instructing you not to 19:30:32
answer. You can answer the question. 19:30:34
But I'm giving you a short leash. It's 19:30:35
late, we're tired. She's answered the 19:30:36
questions. 19:30:36
MR. BENSON: This is discoverable 19:30:38
information. I don't care what kind of leash 19:30:39
you're giving me. 19:30:41

Q Please answer the question as to when you 19:30:43
attended this meeting. 19:30:44
THE WITNESS: Just so I'm clear, am I okay 19:30:45
to answer the question? 19:30:47
MS. OSBORN: You're okay to answer when we 19:30:49
interviewed her, if you can remember the date. 19:30:50
A It was sometime during the month of May 2004. 19:30:53
Q May 2004? 19:30:58
MS. OSBORN: 2014. 19:31:00
A I wondered why you all looked at me. May 2014. 19:31:02
MR. BENSON: Okay, thank you. Those are 19:31:13
all the questions I have. 19:31:14
MS. OSBORN: Anyone else? 19:31:18
THE WITNESS: Everybody done? 19:31:20
THE VIDEOGRAPHER: This concludes the 19:31:21
deposition of Meggan Ehret. We are off the 19:31:22
record. The time is 7:30 p.m. 19:31:28

_____
MEGGAN EHRET

Subscribed and sworn to before me
this day of , 2015.

_____
NOTARY PUBLIC